

## **MINUTES OF MARCH 2, 2015**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 2, 2015, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning and Zoning, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Findings of Fact for January 5, 2015 as circulated. Motion carried 5 – 0.

Motion by Mr. Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Findings of Fact for January 26, 2015 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### **PUBLIC HEARINGS**

**Case No. 11533 – Cellco Partnership d/b/a Verizon Wireless** – northeast of Watson Road (Road 500) approximately 2,200 feet northeast of Ellis Grove Road (Road 498) (911 Address: 51777 Watson Road, Laurel, DE) (Tax Map I.D. 4-32-6.00-33.02)

An application for a special use exception to place a telecommunications tower.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Andrew Petersohn and Petros Tsoukakas were sworn in and to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunications tower; that the proposed tower will be 145-feet tall with a five (5) feet lightning rod; that the Property consists of 13.8 acres; that the area near the Property is rural in character with isolated homes; that there are no subdivisions nearby; that the proposed tower will meet all height and setback requirements; that the proposed tower will meet the lighting requirements set forth in the Code; that the proposed tower will be located to the rear of existing agriculture buildings and near adjacent tree lines so that the tower can meld into the Property as much as possible; that the proposed tower will be no closer than 375 feet from any dwellings on

neighboring properties; that the Applicant is a holder of a Federal Communications Commission (FCC) license and is required to provide reliable service; that, due to the increased demand for service in this area, the proposed tower is needed; that the Applicant has been advised in gaps in service; that the Applicant sought tall structures for collocation but there were no locations available for collocation; and that the nearest structure was 2.3 miles away from the Property and would not alleviate the Applicant's coverage issues.

Mr. Petersohn testified that the area near the proposed tower is rural and that the Applicant has little service in the area. Mr. Petersohn showed the Board coverage maps of the area. Mr. Petersohn testified that there is a great expanse of unserved area between Laurel and the Maryland/Delaware border; that the proposed tower will serve that unserved area; that in home service is used as the standard to provide reliable coverage; that the proposed tower is approximately four (4) miles from another tower site; that the other tower will not be able to serve this gap in coverage; that he is a licensed Delaware engineer; that the proposed tower will be 210 times below the FCC safety emissions requirement; and that these sites are low power facilities as compared to television and radio antennas.

Mr. Tracey stated that the proposed tower site will include a fifty (50) feet by fifty (50) feet fenced in compound; that the equipment shelter will be within the compound; that at least two other providers may be able to collocate on the tower; and that all setback and lighting requirements will be met.

Mr. Tsoukakas testified that he is the civil engineer on the project; that the Property is not located within a flood zone or wetland area; that the proposed tower will be site-specific engineered; and that the tower will be designed in compliance with all necessary codes.

Mr. Tracey stated that the use will not substantially adversely affect the surrounding and neighboring properties; that the site does not generate any noise or smells; that the only traffic will be once a month for maintenance; that the natural screening on the Property will lessen the visibility impact of the proposed tower; that the tower will provide better coverage to cell phone users in the area; that customer complaints related to dropped calls led to this application; that he was in the area of the site recently and a call dropped; and that the closest home is 375 feet away.

Mr. Petersohn affirmed the statements made by Mr. Tracey regarding the RF emissions of the proposed tower.

Mr. Tsoukakas affirmed the statements made by Mr. Tracey regarding the civil engineering of the proposed tower.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11533 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and all requirements set forth in Chapter 115-194.2 have been met.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11534 – Wawa, Inc.** – northeast of Route One (Coastal Highway) approximately 300 feet southeast of Wolf Neck Road (Road 270) (911 Address: None Available) (Tax Map I.D. 3-34-12.00-105.05 & 106.01)

An application for a variance from the required density of landscape plantings.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Alexander Crouse and John Barwick were sworn in to testify about the Application. John Paradee, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Paradee stated that the Applicant is requesting a variance from the required density of landscape plantings within the Highway Corridor Overlay Zone buffer requirement; that Exhibit “D” in the booklet provided by the Applicant shows the landscaping which would be required if the Applicant were to meet the landscaping requirements set forth in the Sussex County Code; that Exhibit “E” in the booklet shows the proposed landscaping the Applicant is requesting with the variance; that the landscaping required by the Sussex County Code is quite dense; that the required landscaping would reduce visibility and would be out of character for the neighborhood; that the Property is located along Coastal Highway on a commercial corridor with heavy traffic; that a dense landscaping buffer would be out-of-place with the area; that the traffic needs to be able to see where it is going; that the landscaping buffer would impede visibility of the Property and restrict efficient access to the Property; that developing the Property to conform to the existing landscaping requirements would place an unreasonable burden on the Applicant and patrons; that improved visibility of the Property by the reduced landscape buffer will improve the safety of access to the site; that the difficulty has not been created by the Applicant; the variance will not alter the character of the neighborhood; that the variance promotes public welfare; that that the variance is the minimum variance to afford relief; that attractive landscaping will still be placed on the Property but the landscaping, as proposed will be less dense than required by the Code; that the Applicant is constructing a new entrance on Northbound Coastal Highway; that the Delaware Department of Transportation (“DelDOT”) supports the location of the proposed entrance; that

DelDOT prefers this entrance as a way to avoid traffic congestion in the area; that the landscaping buffer currently on site is minimal; and that the proposed landscaping buffer will be denser than what is on the Property now but will be consistent with the area.

Mr. Barwick testified that the proposed landscaping will be reduced in height and density; that the landscaping will have gaps in between the trees to improve visibility; that the Applicant proposes to plant lilacs and compact junipers; that the existing swale will remain in front of the existing Wawa; that an underground filtration system will replace the existing pond; that the new entrance will give access to the existing Wawa via an easement across lands owned by Ocean Atlantic and Sandpiper Group, LLC; that there are three (3) easements recorded to allow for two (2) accesses for ingress and egress and one (1) access to allow for the Storm Water Management plan; and that he confirmed the statements made by Mr. Paradee to be true and correct.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11534 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The physical conditions of the Property create a unique circumstance;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the proposed plan in Exhibit "E" and for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11535 – Frances Kathleen Wasley, et al.** – south of Route 54 (Lighthouse Road) and being northeast of Salty Way West approximately 258 feet northwest of Salty Way East and being more specifically Lot 66 within Keen-wik West Community (911 Address: 37803 Salty Way West, Selbyville, DE) (Tax Map I.D. 5-33-19.07-33.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application. Mr. Lank advised the Board that the addition to the dwelling was built in 1983 and that the Applicant inherited the Property in 2014.

Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and stated that the Applicant is requesting a variance of two (2) feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicant is one of the former owners of the Property and is the executor of her father's estate; that the Applicant is unable to attend the hearing but has executed an affidavit setting for the facts and circumstances which support the Application; and that the Applicant's realtor intended to appear at the hearing but could not attend due to an illness. Mrs. Burton submitted a sworn affidavit from the Applicant.

Mrs. Burton stated that the Applicant's father and aunt purchased the Property in 1998; that the Applicant's father passed away in May 2014 at which time title to the Property passed to the Applicant and her siblings; that the Applicant entered into a contract to sell the Property; that a survey completed in 2014 for settlement showed the encroachment; that the addition to the existing dwelling was built in 1983; that there were no changes made to the existing dwelling; that the Applicant was not aware of the encroachments and applied for a variance immediately; that the location and shape of the Property make it unique; that the difficulty was not created by the Applicant or her father; that the variance is necessary to enable reasonable use of the Property; that it will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; that the use will not impair the uses of the neighboring and adjacent properties; that the Applicant is not aware of any complaints about the location of the dwelling; that the Property cannot otherwise be developed in strict conformity with the Zoning Code as it would be necessary to remove the front portion of the garage which has been there since 1983; that the variance requested is the minimum variance necessary to afford relief; that the variance represents the least modification of the regulation at issue; and that they were not able to locate a copy of a Certificate of Compliance when researching the matter.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11535 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape and location;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11536 – Barney L. Lane, Trustor** – northwest of Route 16 on north end of Broadkill Beach and being southwest of Pintail Lane approximately 700 feet northwest of Alaska Avenue and being Lots 19 and 20 Section 1 Block C within Back Bay Development Broadkill Beach (911 Address: None Available) (Tax Map I.D. 2-30-24.00-70.00 & 71.00).

An application for variances from the front yard and side yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application. Mr. Lank stated that the Applicant intends to combine Parcels 70 and 71 into one parcel.

Sandy Wright was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case to the Board on behalf of the Applicant and submitted a sworn affidavit signed by the Applicant.

Mrs. Burton stated that the Applicant is requesting a variance of 9.5 feet from the thirty (30) feet front yard setback requirement and a variance of 7.1 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that the Applicant purchased Lot 20 (Parcel 71) in 1977; that the dwelling sits on Lot 20; that the Applicant improved the home by enclosing the porch in 1983; that an addition was made to the front of the home and the deck in or about 1984; that the last addition to the back of the home, which was not encroaching, was completed in 1987; that in 1985 the Applicant purchased the adjacent Lot 19, which is improved by a gazebo; that the Applicant plans to sell Lot 19 (Parcel 69) and the existing gazebo will be removed; that the Applicant also owns Lot C-8 (Parcel 71) and in 1988 built a detached garage on Lot C-8; that the Applicant plans to combine Lot 20 and Lot C-8; that Lot 19 is currently owned by the Applicant's trust; that the Applicant recently obtained a survey of the Property which reveals the encroachments; that the dwelling, as improved, has been in its current location since 1987; that the Applicant was unaware of the encroachments until the recent survey; that the existing dwelling was built at an angle on the Property thereby creating a unique circumstance; that the difficulty was not created by the Applicant, since he did not build the existing dwelling; that the Applicant hired professional contractors to build the additions and was unaware of any encroachments; that the variances are necessary enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood; that the use will not be detrimental to the public welfare; that the use will not substantially or permanently impair the uses of the neighboring and adjacent properties; that the Applicant has not received any complaints about the location of the dwelling; that the Property cannot otherwise be developed in strict conformity with the Zoning

Code; that the variances are the minimum variances to afford relief; and that the variances represent the least modification of the regulation at issue.

Ms. Wright, under oath, confirmed the statements made by Mrs. Burton.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11536 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The angle of the existing dwelling creates a uniqueness to the Property;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11537 – Nathan Hudson** – southeast of Road 451 (Arvey Road) approximately 1,650 feet south of Road 464 (Woody Road) (911 Address: 14617 Arvey Road, Laurel, DE) (Tax Map I.D. 3-32-9.00-15.08)

An application for a special use exception for the determination of existence to allow for a motorized track driven pool cover.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Nathan Hudson was sworn in and testified requesting a special use exception for the determination of existence to allow for a motorized track driven pool cover; that he plans to put a pool on his property; that he sought out the safest pool system; that he is requesting to seek approval to use a Safety Pool Cover system in lieu of the required four (4) feet high fence per the Zoning Code; that the proposed cover is safer than the fence; that the proposed pool cover is made of a pliable membrane on which several adults can stand; that the cover is operated by an electric switch that will be located inside the porch; that the cover for the switch is locked with a key; that the pool will be covered when the pool is not in use; that this type of pool cover has been approved in other states and used in lieu of a fence; that the pool cover meets or exceeds current safety

standards; that he believes the pool cover is safer than a fence; that the pool is located in the interior of the Applicant's property; that the pool is 603 feet from the nearest neighbor's property; and that the use will not substantially adversely affect the uses of neighboring and adjacent properties, since he is not in a residential development. Mr. Hudson submitted an information booklet for the Board to review.

Virginia Williams was sworn in and asked what other options the Applicant has if the pool cover was to malfunction.

In rebuttal, Mr. Hudson testified that the pool cover can be opened and closed manually; and that he has a generator available during power outages.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11537 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11538 – Martin Vandergrift** – northeast of Road 602 (Hunters Cove Road) approximately 400 feet northwest of Road 594 (Oak Road) (911 Address: 13325 Hunters Cove Road, Greenwood, DE) (Tax Map I.D. 4-30-9.00-40.06)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Martin Vandergrift was sworn in and testified requesting a variance of 8.5 feet from the fifteen (15) feet side yard setback requirement for a proposed pole building; that the proposed pole building will measure thirty (30) feet by sixty (60) feet and be used for storage and his woodworking shop; that he has a lot of woodworking equipment; that the pole building cannot be built farther into the rear yard due to an existing mound septic system; that he has spoken to his neighbors and they have no objection to the Application; that the pole building will match the existing dwelling; that an existing fence and landscaping create a buffer between the proposed pole building and his neighbor's property; that the pole building needs to be located near the home due



to his health issues; that he purchased the Property in 2014 and constructed a sunroom and deck; that the dwelling existed at the time of purchase; that he cannot place a pole building on the Property in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by him, since he did not install the existing mound septic system; that the variance will not alter the essential character of the neighborhood; that there are similar structures in the area and the area is rural in character; that there are no other accessory structures in the area built in front of the dwellings; that he believes that placing the pole building in front of his dwelling would negatively impact the neighborhood; that the use will not be detrimental to the public welfare; that the variance sought is the minimum variance to afford relief; that the variance requested is the least modification of the regulation at issue; and that an in ground propane tank is located on the other side of the dwelling. Mr. Vandergrift submitted pictures for the Board to review.

Virginia Williams, previously sworn in, testified that she was not clear on the location of the Applicant's property and her property; and that, once she reviewed the tax map, she had no objection to the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11538 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing mound septic system makes the Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County zoning code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried that the variance be **granted for the reasons stated**. Motion carried 4 – 1.

The vote by roll call; Mr. Rickard – nay, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11539 – Mike Luciani** – south of Route 54 (Lighthouse Road) and being northeast of Cleveland Avenue approximately 400 feet southeast of Lincoln Drive and being more specifically Lot 8 Block 4 within Cape Windsor Subdivision (911 Address: 38791 Cleveland Avenue Ext., Selbyville, DE) (Tax Map I.D. 5-33-20.18-133.00)

An application for variances from the rear yard and side yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Anthony Balsamo was sworn in and testified requesting a variance of 4.7 feet from the twenty (20) feet rear yard setback requirement for a proposed screen porch, a variance of 4.8 feet from the twenty (20) feet rear yard setback requirement for a proposed two-story dwelling, and a variance of 3.8 feet from the ten (10) feet side yard setback requirement for a proposed HVAC, outside shower, and deck; that the President of the Cape Windsor Homeowners Association has no objection to the proposed dwelling; that the small lot measures fifty (50) feet by ninety (90) feet; that the development was originally a manufactured home park; that the over the years the manufactured homes have been replaced with 2 and 3 story dwellings; that the Applicant is trying to get full use of the Property; that the proposed 2-story dwelling will not alter the character of the neighborhood; that the proposed structures will benefit the neighborhood; that the proposed deck will be used as a walkway; that similar houses have been built in the neighborhood; and that there have been numerous variances granted in the development.

Mr. Balsamo requested more time from the Board to prepare his case.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **leave the hearing open and move it to the end of the public hearings**. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case.

Anthony Balsamo testified that the Property is unique because it is a small, narrow, waterfront lot; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the lot has been there for many years; that the lot is currently empty; that the variances will not alter the character of the neighborhood, since there are very few mobile homes left in the development; that the variances are the minimum variances to afford relief; that the proposed outside shower is not enclosed; and that the proposed deck will be approximately 3 to 4 feet above grade.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to re-open the hearing. Motion carried 5 – 0.

The Board members stated they believe the proposed deck will be too close to the property line; and that they would like the Applicant to seek an alternative plan and resubmit a revised survey.

Mr. Balsamo testified that the parking in the development is limited and the proposed plan helps alleviate that issue; and that he agrees to seek an alternative plan.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open until April 6<sup>th</sup> for the limited purpose of allowing the Applicant to submit a revised plan. Any proposed plan must not exceed the size of the variances previously sought.** Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11540 – Gills Neck, LLC** – southwest of Route One (Coastal Highway) approximately 500 feet northwest of Road 270A (Miller Road) (911 Address: 19266 Coastal Highway, Rehoboth Beach, DE) (Tax Map I.D. 3-34-13.00-325.01)

An application for a special use exception to place an off-premise sign and a variance from the maximum height requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Ring Lardner, of Davis Bowen & Friedel, was sworn in and testified requesting a special use exception to place an off-premise sign and a variance of five (5) feet from the twenty-five feet maximum height requirement for an off-premise sign; that the Applicant purchased the Property in 2001; that the Applicant developed the Shops at Sea Coast including a Safeway grocery store, shops, and gas station; that the proposed 2-sided billboard will measure ten (10) feet by thirty (30) feet; that the proposed billboard will meet all setback and separation requirements; that there are other billboards nearby; that there are no churches, dwellings, or public lands within 300 feet of the proposed billboard; that the billboard will not substantially affect adversely the uses of neighboring and adjacent properties; that the proposed billboard will blend in with the surrounding area; that the proposed billboard will overhang an existing service drive which is used for deliveries to the existing shopping center; that a vertical clearance of fourteen (14) feet is required by the U.S. Department of Transportation Federal Highway Administration; that the proposed height will allow for a clearance of eighteen (18) feet; that the proposed billboard will not exceed the height of the existing building; that there are trees planted along the front of the Property and the height variance will allow the existing landscaping to remain in place; that the height variance will allow for traffic to access the service road and for maintenance of the building; that the variance will enable reasonable use of the Property and maintain the minimal vehicle clearance;

that the location of the billboard was chosen because it will have the least impact on the site; that the billboard will not alter the character of the neighborhood; that the variance will not be detrimental to the public welfare; that the variance is the least modification of the regulation at issue; that the variance requested is the minimum variance to afford relief; that the size of the sign is proportionate to travelers along the adjacent road at posted speed limits; that the sign will be located approximately five (5) feet from the building; that the billboard is a flagpole style sign; that the existing use of the Property creates a unique circumstance and exceptional practical difficulty by limiting the placement of the proposed billboard; that the billboard cannot be installed at the height required by the Zoning Code due to the existence of the service road and the location of a building on a nearby property which may be obstructed by a shorter sign; that the sign will not block views of travelers along the adjacent Route One or Miller Road; and that the proposed billboard will be leased and/or used by the Applicant for other entities of the Applicant on other properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to take the case under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11540 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing use and service drive on the Property create a unique circumstance;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded Mr. Workman, and carried unanimously that the special use exception and variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11541 – Kenneth Evans** – southwest corner of Road 341 (Falling Point Road) and Road 343 (Wingate Road) (911 Address: 31360 Wingate Road, Dagsboro, DE) (Tax Map I.D. 1-34-10.00-5.00)

An application for a special use exception to place a manufactured home type structure for a medical hardship.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Kenneth Evans was sworn in and testified requesting a special use exception to place a manufactured home type structure for a medical hardship; that the manufactured home will be used by his 90-year old mother; that she has recently fallen and needs to have someone near to care for her; that his mother wants to live alone; that the Property is approximately 1.5 acres in size; that he has spoken with the neighbors and they have no objection to the Application; that the unit will be placed in an area where it will not be as visible from neighboring properties; that his neighbor has low-lying, wooded lands which are unlikely to be developed; that the unit will meet the required setback requirements; that the unit would be removed if his mother passed away; that the unit will be a 2015 single-wide model; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11541 for a period of two (2) years for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of neighboring and adjacent properties. The Applicant has also demonstrated that a medical hardship exists.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of two (2) years for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11542 – Linda Gregg** – southeast of Route One (Coastal Highway) and being east of Bryan Drive approximately 100 feet south of Tiffany Drive and being more specifically Lot 186 in Midway Estates Subdivision (911 Address: 101 Bryan Drive, Rehoboth Beach, DE) (Tax Map I.D. 3-34-6.00-197.00)

An application for variances from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Linda Gregg was sworn in and testified requesting a variance of 4.7 feet from the ten (10) feet side yard setback requirement for an existing porch and a variance of 0.7 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that she learned of the encroachments during the process of purchasing the Property; that she recently purchased the Property; that a survey completed for settlement showed the encroachments; that the previous owners were not aware of any encroachments; that it is a unique circumstance since she purchased the Property with the encroachments; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code without a variance; that the dwelling is only .7 feet into the setback area; that the existing porch referenced on the Application is actually a set of steps; that she would be required to shave a portion of her house in order to bring the dwelling into compliance; that the dwelling was built in 1973; that she did not build the house and the people she purchased the house from did not build the house; that she has not made any additions to the house; that the variances will not alter the character of the neighborhood; that she has received no complaints from neighbors; that there are similar dwellings in the development; that the development is fully developed; and that the variances requested are the minimum variances to afford relief.

Mr. Lank stated for the record the existing uncovered steps on the survey can encroach five (5) feet and a variance is not required.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11542 for the requested variance of 0.7 feet from the side yard setback requirement based on the record made at the public hearing and for the following reasons:

1. The existing dwelling creates a unique situation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

The variance of 4.7 feet for the existing porch was deemed not to be necessary.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11543 – First State Signs** – southwest of Route One (Coastal Highway) approximately 250 feet southeast of Sea Air Avenue (911 Address: 19724 Coastal Highway, Rehoboth Beach, DE) (Tax Map I.D. 3-34-13.00-319.02)

An application for a special use exception to place an off-premise sign and variances from the front yard and side yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Dale McCalister was sworn in and testified requesting a special use exception for an off-premise sign, a variance of twenty (20) feet from the twenty-five (25) feet front yard setback requirement for an off-premise sign, and a variance of 8.13 feet from the twenty (20) feet side yard setback requirement for an off-premise sign; that the Board granted a similar request for a sign on this property a few years ago; that the sign was never built; that the Property is very unique; that the proposed restaurant is on a separate parcel that shares the same parking and entrance with another parcel and businesses; that the property is unique in the fact that there are multiple parcels making up one large commercial area; that the owner of the property could not find a tenant until recently; that most off-premise signs are considered billboards; that the proposed off-premise sign is not a billboard; that the proposed off-premise sign will advertise a business (Jimmy's Grille) that cannot be easily seen from Route One; that the proposed restaurant will be open year-round; that the proposed off-premise sign will not exceed the square footage requirements of an on-premise sign; that the variances requested would allow the proposed off-premise sign to be placed at the same setback requirements an on-premise sign would be required to meet; that the variance is needed because the requirements for an off-premise sign set forth a 25 feet setback, which would result in the sign being located in the middle of the parking lot; that, if the sign was placed farther away from Route One, the sign would block the views of the sign of a neighboring liquor store; that the off-premise sign is proposed to be located in the area which has the least amount of impact on neighboring signs; that the Property was previously used as a PNC Bank and a Salvation Army; that the bank is relocated closer to Route One in front of the proposed restaurant; that the proposed restaurant's lot is hidden; that the Applicant did not create the unique situation; that the proposal is the best possible place for development; that the Applicant intends to develop the property formerly used by PNC Bank prior to its relocation for use by Jimmy's Grille; that the variances are necessary enable reasonable use of the Property and bring visibility to an otherwise hidden structure; that the area is a commercial area and the sign is needed; that that use is not detrimental to the public welfare; that the sign will allow patrons to find Jimmy's Grille and help make it a successful business; that the surrounding area is commercial; that the use will not substantially adversely affect the uses of neighboring and adjacent properties; that the proposed sign will measure six (6) feet by twelve (12) feet, with an LED message board measuring four (4) feet by

eight (8) feet and will not exceed the twenty-five (25) feet height requirement; that the Applicant meets the requirements for on-premise signs; that the sign will only be used to advertise the proposed restaurant; that the restaurant will be located on the parcel behind the current PNC Bank; and that the sign will not block any existing signage located on this property or adjacent properties.

Mr. Lank advised the Board that the restaurant will be located on Parcel 318; that the sign will be located on Parcel 319.02; that PNC Bank was originally on Parcel 318 but moved to Parcel 319.02; and that Parcel 318 has been vacant for some time.

Jeffrey Jones was sworn in and testified in opposition to the Application and testified that he owns the adjacent property south of the Property (Parcel 319.01); that the proposed sign will adversely affect his property; that the proposed sign will impede and obstruct the view of his tenants' existing signs; that his tenants include Touch of Italy, Nage, Oreck, and Hickman's Meat Market; that he reviewed the plan for the proposed sign and believed it would block his signs; and that he would agree to the proposed sign without the lower LED message board.

In rebuttal, Mr. McCalister, testified that he could raise and reconfigure the proposed LED portion of the sign to prevent any issues with the neighboring signs; and that he could submit a revised drawing to show the changes.

The Board found that no parties appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to **leave the case open for the limited purpose of allowing the Applicant to submit a revised sign showing the changes discussed**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11530 – Indian River Water Sports Club** – southwest of Road 312 (River Road) and being across from and halfway between Nanticoke Avenue and Cherokee Avenue in Riverdale. (911 Address: 32374 River Road, Millsboro, DE) (Tax Map I.D. 2-34-34.12-43.00)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case to the Board, which had been left open at the February 16, 2015 meeting to allow the Applicant more time to prepare his case.



Mr. Rickard stated that he listened to the hearing held on February 16, 2015.

The Applicant did not appear before the Board to present his Application.

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **denied due to lack of representation to support the application and because the Applicant failed to meet the standards for granting a variance.** Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11519 – James Shelton and Leslie Shelton** – south of Route 54 (Lighthouse Road) and being west of Maple Lane, approximately 1,074 feet south of Cedar Road and being more specifically Lot 40 within Keen-wik Subdivision No. 5 (911 Address: 38364 Maple Lane, Selbyville, DE) (Tax Map I.D. 5-33-19.16-38.00)

An application for a variance from the front yard setback requirement.

Mr. Lank stated that the Applicant submitted the requested survey to show an average front yard setback within three-hundred (300) feet of proposed dwelling on both sides of the Property.

The Board reviewed the submitted survey and discussed the case which was left open at the February 2, 2015 meeting to specifically allow the Applicant to submit a survey to show an average and for the submittal of a survey from Ronald McCabe for his property.

The Board discussed the new survey and the Application. Mr. Rickard said that he believed that a variance of 3.6 feet would meet the standards for granting a variance but a variance of 4.9 feet would not meet the standards for granting a variance.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11519 for a variance of 3.6 feet from the thirty (30) feet front yard setback requirement based on the record made at the public hearing and for the following reasons:

1. The average front yard setback creates a unique circumstance;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance requested is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **granted for a 3.6 feet variance from the required thirty (30) feet front yard setback requirement**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea. Mr. Workman did not participate in the discussion or vote on this case.

**Meeting Adjourned 10:45 p.m.**